

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**BILLINGS DIVISION**

FILED  
BILLINGS DIV.

2010 FEB 3 PM 3 13

PATRICK E. DUFFY, CLERK

BY

DEPUTY CLERK

DAVE BURLEY and JEANNIE  
BURLEY,

Plaintiffs,

vs.

BURLINGTON NORTHERN &  
SANTA FE RAILWAY COMPANY, a  
foreign corporation, f/k/a  
BURLINGTON NORTHERN  
RAILROAD COMPANY, a Delaware  
Corporation,

Defendants.

CV-07-147-BLG-RFC-CSO

**ORDER ADOPTING FINDINGS  
AND RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE**

DIANA AND KENNETH MERIDETH,  
Plaintiffs,

vs.

BURLINGTON NORTHERN &  
SANTA FE RAILWAY COMPANY, a  
foreign corporation, f/k/a  
BURLINGTON NORTHERN  
RAILROAD COMPANY, a Delaware  
Corporation,

Defendants.

CV-08-30-BLG-RFC-CSO

DANA NELSON,

Plaintiff,

CV-07-148-BLG-RFC-CSO

vs.

BURLINGTON NORTHERN &  
SANTA FE RAILWAY COMPANY, a  
foreign corporation, f/k/a  
BURLINGTON NORTHERN  
RAILROAD COMPANY, a Delaware  
Corporation,

Defendants.

U.S. Magistrate Judge Carolyn Ostby has entered findings and recommendations on BNSF's motions for partial dismissal under Rules 12(b)(1) and 12(h)(3) in three cases captioned above. Magistrate Judge Ostby concluded that this case is controlled by the Montana Supreme Court's holding in *Sunburst School Dist. No. 2 v. Texaco, Inc.*, 165 P.3d 1079, 1092 (Mont. 2007) that nothing in CECRA preempts a common law claim for restoration damages and therefore recommends that BNSF's motions be denied.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the December 18, 2009 Findings and Recommendation.

Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After a thorough review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendations are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that the following motions are **DENIED**: *Doc. 118* in CV 07-147-BLG-RFC-CSO; *Doc. 90* in CV 07-148-BLG-RFC-CSO; and *Doc. 93* in CV 08-30-BLG-RFC-CSO.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 7<sup>th</sup> day of February 2010.

  
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RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE